

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rule I and the amendment of ARM)	PROPOSED ADOPTION AND
10.16.3022, 10.16.3122, 10.16.3320,)	AMENDMENT
10.16.3324, 10.16.3346, 10.16.3505)	
through 10.16.3507, 10.16.3512,)	
10.16.3560, 10.16.3660, and)	
10.16.3904 pertaining to special)	
education)	

TO: All Concerned Persons

1. On March 24, 2010 at 9:00 a.m., the Superintendent of Public Instruction will hold a public hearing in Superintendent's conference room at 1227 11th Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Superintendent of Public Instruction will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Office of Public Instruction no later than 5:00 p.m. on March 15, 2010, to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail bemarlow@mt.gov.

3. Statement of Reasonable Necessity: The adoption of New Rule I and the amendments to ARM 10.16.3122, 10.16.3505, 10.16.3506, and 10.16.3507 are made to comply with the updated IDEA regulations issued by the Department of Education on December 1, 2008. The amendment to ARM 10.16.3022 is made to be consistent with statute. The amendment to ARM 10.16.3320 allows a person or entity requesting an evaluation to do so by means of an electronic signature thereby expediting the process. ARM 10.16.3324 is being amended to clarify the type of documentation required when extended school year services are being requested. The amendments to ARM 10.16.3346 provide for increased student safety and parental notification when aversive treatment procedures are used. The remaining amendments are to correct, clarify, or provide consistency to special education rules.

4. The rule as proposed to be adopted provides as follows:

NEW RULE I REVOCATION OF PARENTAL CONSENT (1) A parent may revoke consent for services at any time. The revocation of consent must be provided to the district in writing.

(2) Upon receipt of the parent's written revocation of consent, the district must:

- (a) issue written notice to the parent of receipt of the revocation;
 - (b) issue prior written notice of the date on which special education and related services will cease; and
 - (c) inform the parent in writing that the procedural safeguards of IDEA no longer apply to their child.
- (3) On the date set forth in the prior written notice in (2)(b), the district must cease providing services and is not permitted to file a request for a special education due process hearing or implement any dispute resolution procedures generally allowed under the Individuals with Disabilities Education Act as revised. The district is not required to amend the child's education records to remove references to the child's receipt of special education and related services.

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

5. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

10.16.3022 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING VISUAL IMPAIRMENT (1) The student may be identified as having a visual impairment if the student has:

- (a) a visual acuity of 20/70 or less in the better eye with correction or field of vision which at its widest diameter subtends an angle of no greater than 20 degrees in the better eye with correction; or
- (b) a medically indicated expectation of visual deterioration that would qualify the child as having a visual acuity as described in (1)(a).

AUTH: 20-7-402, MCA

IMP: 20-7-401, 20-7-403, 20-7-471, MCA

10.16.3122 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR STUDENTS WITH DISABILITIES (1) The local educational agency in which a student with disabilities resides is responsible for ensuring the student with disabilities, age 3 through 18, beginning on the student's third birthday, including students with disabilities who have been suspended or expelled from school, has available a free appropriate public education in accordance with the Individuals with Disabilities Education Act (IDEA) (20 USC, sections 1401 through 1419) and its implementing regulations (34 CFR, part 300), the Montana statutes pertaining to special education (Title 20, chapter 7, part 4, MCA) and the administrative rules promulgated by the Superintendent of Public Instruction governing special education (ARM Title 10, chapter 16) unless the parent has refused initial consent for services or has revoked such consent. If the student's third birthday occurs in the summer, the individualized education program (IEP) team shall decide whether the student is to receive extended school year services during the summer. The local educational agency shall participate in transition planning conferences arranged by the early intervention provider agency.

(2) through (7) remain the same.

(8) Local educational agencies must take measurable steps to recruit, hire, train, and retain qualified personnel, including individuals with disabilities, to provide special education and related services to students with disabilities.

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

10.16.3320 REQUEST FOR INITIAL EVALUATION (1) and (2) remain the same.

(a) When the request for initial evaluation is made by an LEA, the request must include a statement of the reasons for the request, including documentation of regular education interventions for students enrolled in school, and the signature or electronic signature of the person making the request.

(b) When the request for initial evaluation is made by a parent, the request must include a statement of the reasons for the request and the signature or electronic signature of the person making the request.

(c) through (3) remain the same.

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

10.16.3324 EXTENDED SCHOOL YEAR SERVICES (1) remains the same.

(2) IEP teams shall use recoupment and regression as the criteria for determining eligibility for extended school year services. In the absence of the opportunity to collect data to determine regression, the IEP team may conclude that ESY services are necessary based on ~~observations and other information that suggest~~ data that research has shown to predict regression and difficulty with recoupment ~~may occur~~.

(3) remains the same.

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

10.16.3346 AVERSIVE TREATMENT PROCEDURES (1) through (6)(c) remain the same.

(7) A behavioral intervention plan using aversive treatment procedures must be in writing and shall:

(a) through (8) remain the same.

(9) Parents must be informed as soon as possible, but no less than 24 hours after the procedure is used, in writing, or orally if in writing is not possible, in their native language each time an aversive procedure is implemented on their child.

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

10.16.3505 PARENTAL CONSENT (1) through (1)(c)(ii) remain the same.

~~(d) When parental consent for annual placement is refused, the local educational agency shall informally attempt to obtain consent from the parent. If, after exhausting informal attempts, the local educational agency is unable to obtain consent or resolve the disagreement, the local educational agency shall:~~

- ~~(i) provide the parent written notice as required by 34 CFR 300.503; and~~
- ~~(ii) if the local educational agency believes its proposed annual placement is necessary to ensure a free appropriate public education, it shall file a request for special education due process hearing in accordance with ARM 10.16.3507 through 10.16.3523, or take other action necessary to ensure that a parent's refusal to consent does not result in a failure to provide the student with a free appropriate public education.~~

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

10.16.3506 VOLUNTARY MEDIATION (1) remains the same.

(2) Mediation may not be used in the case of revocation of parental consent for placement.

(2) through (5) remain the same but are renumbered (3) through (6).

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

10.16.3507 SCOPE OF RULES (1) remains the same.

(2) A school district is not permitted to request a due process hearing when a parent has revoked consent for special education evaluation or services.

AUTH: 20-7-402, MCA

IMP: 20-7-402, MCA

10.16.3512 IMPARTIAL HEARING OFFICER'S PREHEARING - FORMULATING ISSUES (1) through (2) remain the same.

~~(3) Individual privacy.~~ The impartial hearing officer shall ~~provide for~~ implement provisions to ensure the privacy of matters before him/her as ~~is~~ required by law. Parents maintain the right to waive their right of confidentiality and privacy in the hearing and to have the hearing be open to the public. The impartial hearing officer shall also provide or allow an opportunity for the student with disabilities to be present at the hearing upon request of the parent, guardian, surrogate parent, or the student with disabilities who is the subject of the hearing.

~~(4) Location of hearing.~~ The impartial hearing officer shall conduct the hearing at a time and place reasonably convenient to the parent and student. If the parties cannot agree on such time and place, the hearing will be held in the county in which the named school district is located.

AUTH: 20-7-402, MCA

IMP: 20-7-402, MCA

10.16.3560 SPECIAL EDUCATION RECORDS (1) School records and confidentiality of information must follow the provisions under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations at 34 CFR, part 99, and must follow the provisions established for special education under IDEA and its implementing regulations at 34 CFR ~~500.610 through 500.626~~ 300.610 through 300.626.

(2) remains the same.

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

10.16.3660 EARLY ASSISTANCE PROGRAM (1) through (3) remain the same.

(4) As stated in ARM 10.16.3662, immediately following the filing of a formal administrative complaint as referenced in 34 CFR 300.151 through 300.153 (as distinguished from a request for due process), a parent or guardian and the local educational or public agency may agree ~~in writing~~ to allow the Superintendent of Public Instruction, through the Early Assistance Program, 15 business days from the day it receives the written complaint to attempt to resolve the problem through the Early Assistance Program. Pursuant to 34 CFR 300.152(b)(1)(ii), ~~and upon written agreement of the parties~~, these 15 business days shall not be counted as part of the 60 day complaint resolution timeline.

(5) remains the same.

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

10.16.3904 PROCEDURES FOR APPROVAL (1) A draft of a new or amended interlocal agreement shall be submitted to the Superintendent of Public Instruction for ~~initial review and comment~~ approval on or before January 1. ~~In order for the new or amended agreement to be effective for the ensuing fiscal year, upon completion of initial review and comment by the Superintendent, the agreement shall be submitted to the Attorney General. Within ten days of the Attorney General's approval, the agreement shall be submitted to the Superintendent for final approval. Upon final approval, the cooperative contract shall be filed with the county Clerk and Recorder of the county or counties in which the school districts involved are located and with the Secretary of State.~~

AUTH: 20-7-457, MCA

IMP: 20-7-453, 20-7-454, MCA

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Beverly Marlow, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail bemarlow@mt.gov, and must be received no later than 5:00 p.m., March 26, 2010.

7. Ann Gilkey, Chief Legal Counsel for the Office of Public Instruction has been designated to preside over and conduct this hearing.

8. The Superintendent of Public Instruction maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the Superintendent.

9. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Ann Gilkey
Ann Gilkey
Rule Reviewer

/s/ Denise Juneau
Denise Juneau
Superintendent of Public Instruction

Certified to the Secretary of State, February 16, 2010.